

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ROGER LEE KELLY,

Petitioner,

Civil Action No. 2:12-CV-10271

Hon. Arthur J. Tarnow

v.

LLOYD RAPELJE,

Respondent,

_____ /

**ORDER GRANTING THE MOTION TO PROCEED
IN FORMA PAUPERIS ON APPEAL**

On April 22, 2013, this Court issued an opinion and order denying petitioner's application for writ of habeas corpus brought pursuant to 28 U.S.C. § 2254 and also denied petitioner a certificate of appealability. *Kelly v. Rapelje*, No. 2:12-CV-10271; 2013 WL 1721634 (E.D. Mich. April 22, 2013). Petitioner has now filed a motion to proceed *in forma pauperis* on appeal. For the reasons stated below, the motion to proceed *in forma pauperis* on appeal is granted.

Although the Court has denied a certificate of appealability to petitioner, the standard for granting an application for leave to proceed *in forma pauperis* (IFP) is a lower standard than the standard for certificates of appealability. See *Foster v. Ludwick*, 208 F. Supp. 2d 750, 764 (E.D. Mich. 2002)(citing *United States v. Youngblood*, 116 F. 3d 1113, 1115 (5th Cir. 1997)). Whereas a certificate of appealability may only be granted if petitioner makes a substantial showing of the denial of a constitutional right , a court may grant IFP status if it finds that an appeal is being taken in good faith. *Id.* at

Kelly v. Rapelje, 2:12-CV-10271

764-65; 28 U.S.C. § 1915(a)(3); Fed. R.App.24 (a). “Good faith” requires a showing that the issues raised are not frivolous; it does not require a showing of probable success on the merits. *Foster*, 208 F. Supp. 2d at 765. Although jurists of reason would not debate the Court’s resolution of petitioner’s claims, the issues are not frivolous; therefore, an appeal could be taken in good faith and petitioner may proceed *in forma pauperis* on appeal. *Id.*

ORDER

Based upon the foregoing, IT IS HEREBY ORDERED that the “Motion To Proceed on Appeal In Forma Pauperis” [Dkt. # 18] is GRANTED.

S/Arthur J. Tarnow
Arthur J. Tarnow
Senior United States District Judge

Dated: July 9, 2013

I hereby certify that a copy of the foregoing document was served upon parties/counsel of record on July 9, 2013, by electronic and/or ordinary mail.

S/Catherine A. Pickles
Judicial Assistant